

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

CV 14-1061 RB/WPL
CR 11-1385 RB

RAUL ROGER ORONA, JR.,

Defendant/Movant.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

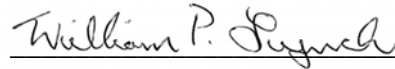
Raul Roger Orona, Jr.'s filed a Supplemental/Amended Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (CV Doc. 19; CR Doc. 140).¹ Orona challenges the validity of his sentence on bases that he was unconstitutionally sentenced under the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e), which was found to be unconstitutionally vague in *Johnson v. United States*, --- U.S. ---, 135 S. Ct. 2551, 2563 (2015) and that he received constitutionally ineffective assistance of counsel. The United States stipulates, and I agree, that *Johnson* applies retroactively to Orona's case as a new substantive rule pursuant to *Schriro v. Summerlin*, 542 U.S. 348, 352 (2004), and *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987). Because I conclude that Orona is entitled to a resentencing based on *Johnson*, it is unnecessary for me to reach his ineffective assistance claim at this time.

Accordingly, I recommend that the Court grant Orona's amended motion with respect to his claim under *Johnson*, vacate Orona's sentence, order that a new presentence report be

¹ All citations to "CV Doc." refer to documents filed in the civil case, CV 14-1061 RB/WPL. All citations to "CR Doc." refer to documents filed in the criminal case, CR 11-1385 RB. Documents filed in both cases are cited by reference to the corresponding document in the civil case.

prepared, and set this case for resentencing. I recommend that the Court delay ruling on Orona's ineffective assistance claim.

THE PARTIES ARE NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the Proposed Findings and Recommended Disposition. If no objections are filed, no appellate review will be allowed.**



WILLIAM P. LYNCH
UNITED STATES MAGISTRATE JUDGE

A true copy of this order was served on the date of entry--via mail or electronic means--to counsel of record and any pro se party as they are shown on the Court's docket.